UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES	:	
Plaintiff,	:	Civil No. 3:17-CR-216(AWT)
v.	:	
TYSHAWN COLEMAN,	:	
Defendant.	:	

RULING ON MOTION TO SUPPRESS EVIDENCE

Defendant Tyshawn Coleman ("Coleman") is charged in a one-count indictment with knowing possession of ammunition by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Coleman has moved to suppress all evidence discovered and seized from him by officers of the Hartford Police Department on August 5, 2017, including a FIOCCHI USA 45 A.C.P. caliber live round, as well as any fruits therefrom, including any testimonial statements.

For the reasons set forth below, the motion to suppress is being denied.

I. FINDINGS OF FACT

In the early morning hours of August 5, 2017, beginning at approximately 2:52 AM, a 9-1-1 civilian dispatcher for the Hartford Police Department received calls from four citizens concerning a shooting that had just occurred on Edgewood Street.

Caller #1 called at 2:52:02 AM. Caller #2 called the 9-1-1 dispatcher at 2:53:53 AM to report a shooting. At 2:54:41 AM Caller #3 called to report a shooting at 62-64 Edgewood Street. During the call, this caller also reported that police officers were on the scene. The time at which Caller #4 called is not in the record. Then at 2:58:04 AM, Caller #1 called in again. He informed the dispatcher that he had called in previously and stated that he thought police officers were "broadcasting the wrong car." 911 Call Transcripts, Mot. to Suppress, Ex. B, ECF No. 25-3, at 6. Under United States v. Colon, 250 F.3d 130 (2d Cir. 2001), because the 9-1-1 dispatcher was a civilian dispatcher, the officers who stopped the vehicle in which the defendant was riding could not have relied on what the callers told the civilian dispatcher as a basis for stopping the vehicle. Rather the officers could rely only on what the police dispatcher told the officers. However, because the transcript of the police dispatch tapes does not reflect the times of the broadcasts to the extent the transcript of the 9-1-1 calls does, the transcripts of the 9-1-1 calls are helpful in determining by when a couple of things had happened.

The Hartford Police Department's dispatch tapes, for the period between 2:54 AM and 3:12 AM reflect, among others, the following broadcasts:

> Dispatch: Unit 15. Albany and Homestead 1081. Albany and Homestead 1081. You have a white Lexus with white letters on the back window. Connecticut Reg 821-NUE. I guess it shot up a car on Edgewood. Called in by a citizen. Albany and Homestead 1081. White Lexus with white letters on the back window. Connecticut Reg 821-NUE. At 2:54.
>
> Unit 1: Where was that vehicle traveling?
>
> Dispatch: It just shot up a car on Edgewood. No directional travel from there.

Dispatch Transcript - 17-22023A, Gov.'s Response to Mot. to Exclude, Ex. 1, ECF No. 61-1, at 1.

Nine broadcasts later, the dispatcher conveyed to officers: "Supposed to be in a white Acura. [Two] people shot in the vehicle." Id. Thus, this statement was broadcast before 2:58:04 AM, when Caller #1 called in the second time.

Four broadcasts later there was the following:

> Unit 110: 110. Describe the suspect vehicle one more time, please. I'm in the area.
>
> Dispatch: It's going to be a white Lexus, Connecticut Reg 821-NUE.
>
> Officer 3: It comes back to a 2016 Lexus. IS300 it says. (inaudible).

Id. Six broadcasts later, Unit 214 stated, "Hey, let's see if we can get a canvas on that vehicle." Id. at 2. Then four broadcasts later, Officer 9 stated, "Hey, George, did they tell you last direction of that car? Did they see it leave?", and Unit 214 responded, "It went South on Edgewood then went North

on Gregson. Went West on Homestead." Id. Five broadcasts later, Unit 214 stated, "We only got one victim out here." Id.

Sixteen broadcasts later, Officer 17 stated, "Can I get a repeat on the suspect vehicle?", id., and the dispatcher replied: "It's going to be 821-NUE. It's supposedly a 2016 white Lexus with white letters on the back of it. It's supposed to be a loaner." Id. at 3. Twenty broadcasts later, there was the following:

> Unit 110: I just got approached. Supposedly that car's seen last in the Blue Hills area. It's got Hoffman Lexus written on the back window. Occupied by 3 black males. He followed them up in that area and then lost them.
>
> Dispatch: 10-4. I'll notify Bloomfield.
>
> Unit 110: Yeah, last seen possibly going towards maybe Granby from Tower. He didn't know the exact street though.

Id. Then nine broadcasts later, Unit 21 stated: "I'm behind him. Westland and Vine. Coming towards Albany Avenue here." Id. at 4.

Thus, the very first response to the initial broadcast by the dispatcher was an inquiry calculated to get information that officers could use to locate the suspect vehicle. Then after the location at which the suspect vehicle was last seen was broadcast, officers began conducting a canvas of the surrounding streets in the area where the vehicle was last seen, starting some time after 2:58 AM. At approximately 3:08 AM, after an officer observed the suspect vehicle near Vine Street, that officer followed the suspect vehicle and broadcast its path of

travel and location to other officers. At approximately 3:12 AM, the decision was made to stop the suspect vehicle. Coleman noticed a police vehicle following the Lexus, and then "[a]s the white Lexus approached the intersection of Enfield and Greenfield Streets, three or four more police vehicles approached from the other sides." Declaration of Tyshawn Coleman, Mot. to Suppress, Ex. A, ECF No. 25-2, at ¶ 3. "[T]here were about eight to ten officers in total. The officers had their firearms pointed at the white Lexus." Id. at ¶ 4.

Officer Israel Mantilla was on patrol in the Hartford downtown district when he heard that the suspect vehicle was being stopped. Officer Mantilla went to assist the officers who were stopping the suspect vehicle. He drove to Greenfield Street where the vehicle had been stopped. When he arrived on the scene he saw that the three occupants of the vehicle had been removed from the car and handcuffed; they were on the ground, face down. Officer Mantilla went to the front seat passenger, who was later identified as defendant Tyshawn Coleman, for the purpose of conducting a "patdown" to ensure officer safety. Mantilla conducted the patdown looking for weapons. Because the defendant was face-down, Mantilla turned Coleman to one side. He then used his palms and hands to swipe the defendant's full body, looking for weapons. Mantilla explained and demonstrated how he pressed on the defendant's body, from head to toe. Mantilla explained

that he had been trained to use his palms and move slowly down the body: "It's not a quick pat down. We can't go quick. It's almost pressing down and feeling on the body for weapons." Tr. Suppression Hearing, ECF No. 62, at 28:7-9. After Mantilla had patted down Coleman on one side, he then moved him so that he was on his other side and completed the patdown on the other side.

As Officer Mantilla was performing the patdown, he felt a bulge that was "smooth but also hard," id. at 31:4, in the area of the defendant's front right pocket, specifically in a small pocket that was right above that pocket. Based on his training and experience, Mantilla believed that what he felt was "packaging street-level drugs, marijuana." Id. at 31:6. Although he felt a hard object, Officer Mantilla thought it was drugs. He did not suspect that there was a bullet in the defendant's pocket. But when he removed the package he saw that it was a bullet and marijuana. He then secured the bullet and the marijuana and placed the defendant in the back of his cruiser.

II. DISCUSSION

The defendant argues (1) that the officers did not have reasonable suspicion for a Terry stop; (2) that the officers exceeded the scope of a Terry stop because the number of officers and patrol cars involved, the fact that the officers approached the vehicle occupied by the defendant with their

firearms drawn, and the fact that they took the defendant out of the Lexus, put him on the ground and handcuffed him, made the encounter an arrest as opposed to an investigative stop; and (3) that the officers exceeded the scope of a Terry stop because Officer Mantilla could not have had probable cause, based on the patdown, that the defendant had packaging for street level drugs. The court concludes that the government has met its burden with respect to each of the arguments raised by the defendant.

A. The Terry Stop

"Under the long established rule of Terry v. Ohio, 392 U.S. 1 . . . (1968), police may only stop someone when they have 'reasonable suspicion supported by articulable facts that criminal activity may be afoot.'" United States v. Freeman, 735 F.3d 92, 95-96 (2d Cir. 2013) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). "Reasonable suspicion must be 'based on specific and articulable facts' and not on 'inchoate suspicion or mere hunch.'" Id. at 96 (quoting United States v. Bayless, 201 F.3d 116, 132-33 (2d Cir. 2000)). The court "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." United States v. Arvizu, 534 U.S. 266, 273 (2002). "And the court must evaluate those

circumstances 'through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training.'" Bayless, 201 F.3d at 133 (quoting United States v. Oates, 560 F.2d 45, 61 (2d Cir. 1977)). "But, a district court must not merely defer to the police officer's judgment." Id.

The defendant argues that under Florida v. J.L., 529 U.S. 266 (2000), the officers did not reasonable suspicion for stopping the vehicle in which Coleman was riding. The court concludes that given circumstances surrounding the stop here, the exception recognized in United States v. Simmons, 560 F.3d 98 (2d Cir. 2009) is applicable.

In Freeman, the court observed that:

> In J.L, the [Supreme] Court expressly rejected a firearms exception to Terry's demand that a stop be supported by reasonable suspicion, specific and particularized. The Court acknowledged the danger posed by firearms and reaffirmed that this danger is already accounted for by the very rule of Terry--allowing the police to stop and frisk based upon reasonable suspicion, instead of demanding that officers meet the higher standard of probable cause.

735 F.3d at 100 (internal quotations and citations omitted). However, the court continued:

> We recognized a narrow exception to the rule of J.L. in United States v. Simmons, 560 F.3d 98. In Simmons, an anonymous 911 caller reported an "assault in progress" that possibly involved a firearm. Id. at 101. Based upon the police's need to "act on reports of an emergency situation without delay," we held "that an anonymous 911 call reporting an ongoing emergency is entitled to a higher degree of reliability and requires a lesser showing of corroboration than a tip that alleges general criminality." Id. at 105. Notably, however, in Simmons, we recognized

> that it was a 'close' case. Id. at 107. Recognizing this fact, we now expressly decline to expand the reach of that limited exception, because to expand Simmons to other anonymous reports made to the police, without more would serve to ignore the rule laid out by the Court in J.L. Any exigency in this case was weaker than the exigency in Simmons, as this case contained no report of an ongoing assault (or violence of any kind). Consequently, more particularized evidence was required in this case. Insofar as the police had the same level of reasonable suspicion as they did in Simmons, this suspicion was insufficient to justify a Terry stop in this case.
>
> Nearly every anonymous call made to 911 implicates the need for the police in some way; thus, this jurisprudence must recognize the difference between a latent crime, even "simple possession of a firearm," Simmons, 560 F.3d at 104, and an ongoing emergency, or it fails to heed the rule of J.L. To the extent the district court made a factual finding that a "gun run" was more serious than mere "possession of a firearm," id., we conclude the district court clearly erred. The officers' own testimony indicates that such a radio call is indicative of an individual possibly having a gun.

Freeman, 735 F.3d at 100-101.

In Freeman, "[t]he radio dispatch received by the police officers indicated that 'a person is possibly armed with a firearm' and was 'arguing with a female' near a particular intersection in the vicinity of the Chase Bank." 735 F.3d at 94. "While en route to the location" an officer "repeatedly asked the dispatcher to verify whether the 911 caller 'actually saw a firearm.' Each time, the dispatcher was unable to confirm if that was the case." Id.

In Simmons, the court stated,

> We agree with our sister circuits that an anonymous 911 call reporting an ongoing emergency is entitled to a higher

> degree of reliability and requires a lesser showing of corroboration than a tip that alleges general criminality. The higher degree of reliability is "rooted in the special reliability inherent in reports of ongoing emergencies." Given the greater reliability of an emergency 911 call, the requisite level of corroboration is lower.

560 F.3d at 105 (internal citations omitted). In Simmons, the court concluded that "[t]his approach recognizes the need for police to act on reports of an emergency situation without delay, but still requires police officers to corroborate allegations of criminal activity in some meaningful way." Id. (internal citations omitted).

Here, the civilian dispatcher informed the officers that a citizen had called in a report that someone in a white Lexus had shot someone on Edgewood Street, and provided the officers with the license plate number and other identifying information. In response, officers began canvasing the area in which the suspect vehicle had last been seen. The dispatcher broadcast that the suspect vehicle had been seen going west on Homestead Avenue and it was broadcast almost simultaneously by an officer on the scene that there was in fact one shooting victim on Edgewood Street.

Thus, within four minutes after the dispatcher first broadcast that there had been a shooting and gave a description of the suspect vehicle, officers were on the scene at Edgewood Street and confirmed that there had in fact been a shooting.

Simultaneously, other officers were canvasing the area, looking for the suspect vehicle, which had fled the scene. Thus, the officers knew that this was not a "latent crime," e.g. simple possession of a firearm, or a report of "general criminality." Nor had the dispatcher conveyed information that was merely "indicative of an individual possibly having a gun," Freeman, 735 F.3d at 101. Rather the situation qualified as "an ongoing emergency." The officers had confirmed that someone had in fact been shot and they were looking for the vehicle in which the perperator(s) reportedly had fled from the scene. In such circumstances, police officers are called upon to act in response to the situation without delay. Therefore, the information broadcast by the dispatcher with respect to the description of the suspect vehicle was entitled to a higher degree of reliability, and required a lesser showing of corroboration, than if the call had simply been that someone in a particular car had a gun. The officers who were searching for the suspect vehicle had a reasonable basis for suspecting that the suspect vehicle contained the person(s) who had committed a crime, i.e. the shooting on Edgewood Street, several minutes earlier.

In J.L., the court observed that "[a]n accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police

correctly identify the person whom the tipster means to accuse. Such a tip however, does not show that the tipster has knowledge of concealed criminal activity." 529 U.S. at 272. The situation referred to in this language in J.L. is one involving what Freeman calls "a latent crime." The officers here were confronted with what Freeman calls an "ongoing emergency." Here, it had been established by police officers, not merely suspected, that the shooting had occurred and the exigency was much stronger than was the case in Freeman, and, in fact, stronger than it was in Simmons.

Thus, the court concludes that the Terry stop here was reasonable because "there was a 'particularized and objective basis' for suspicion of legal wrongdoing under the 'totality of the circumstances.'" Simmons, 560 F.3d at 103 (quoting Arvizu, 534 U.S. at 273).

B. Scope of the Terry Stop

The defendant argues that the officers exceeded the scope of a Terry stop because eight to ten officers boxed in the suspect vehicle with four or five police cars, approached the suspect vehicle with their firearms drawn and pulled the defendant out of the vehicle, threw him to the ground and handcuffed him. The defendant contends that the officers "execute[d] an investigative stop in a manner befitting an arrest. See Posr v. Doherty, 944 F.2d 91, 98 (2d Cir. 1991) ("If

the totality of the circumstances indicates that an encounter has become too intrusive to be classified as an investigative detention, the encounter is a full-scale arrest, and the government must establish that the arrest is supported by probable cause.).” Mot. to Suppress, ECF No. 25, at 11.

In evaluating whether an investigative stop has morphed into a full blown arrest, the court considers: “(1) the length of time involved in the stop; (2) its public or private setting; (3) the number of participating law enforcement officers; (4) the risk of danger presented by the person stopped; and (5) the display or use of physical force against the person stopped, including firearms, handcuffs, and leg irons.” United States v. Newton, 369 F.3d 659, 674 (2d Cir. 2004). Here, the government has met its burden of showing that the seizure was sufficiently limited in scope and duration to satisfy the requirements for continuing to be an investigative stop at the point in time when Officer Mantilla conducted the patdown.

“[I]nvestigative detentions involving suspects involving suspects in vehicles are especially fraught with danger to police officers.” Michigan v. Long, 463 U.S. 1032, 1047 (1983). “The risk of harm to both the police and the occupants [of a stopped vehicle] is minimized . . . if the officers routinely exercise unquestioned command of the situation.” Arizona v. Johnson, 555 U.S. 323, 330 (2009) (internal citations and

quotations omitted). Officers "may order out of a vehicle both the driver and any passengers, [and] perform a 'patdown' of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous." Knowles v. Iowa, 525 U.S. 113, 118 (1998) (internal citations omitted).

Here, the number of participating law enforcement officers and the use of firearms and handcuffs was appropriate given the reason the officers were conducting the investigative stop, i.e. they reasonably believed that the suspect vehicle contained someone who had just committed the shooting on Edgewood Street. The Terry stop took place in a public setting. The duration of the Terry stop was very brief. Officer Mantilla proceeded to assist officers who were going to stop the suspect vehicle. He arrived after the occupants had been taken out of the vehicle but before any of the officers on the scene had conducted a patdown of the defendant for officer safety. Officer Mantilla patted down the defendant promptly upon arriving on the scene and after the patdown, the defendant was placed in Mantilla's cruiser to be transported to police headquarters, at which point it was no longer a Terry stop, but an arrest.

Thus, the court concludes that the officers did not exceed the scope of a Terry stop.

C. The Plain Feel Doctrine

"If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context." Minnesota v. Dickerson, 508 U.S. 366, 375-76 (1993). "Regardless of whether the officer detects the contraband by sight or by touch, however, the Fourth Amendment's requirement that the officer have probable cause to believe that the item is contraband before seizing it ensures against excessively speculative seizures." Dickerson, 508 U.S. at 376.

Here, based on the testimony of Officer Mantilla and the bullet and the marijuana, which were introduced into evidence at the hearing, the court concludes that based on his training and experience Mantilla had probable cause to believe that what he felt was packaging for street level dealing of marijuana. It just so happened that in addition to the marijuana in a plastic bag in the defendant's pocket, there was also a bullet in a plastic bag.

The defendant urges the court to adopt, as its own, findings in other cases where courts did not find an officer's

testimony credible under analogous circumstances. But the court makes its finding based on the testimony and other evidence in this case, after taking into consideration the arguments of the defendant.

III. CONCLUSION

For the reasons set forth above, the defendant's Motion to Suppress Evidence (ECF No. [25]) is hereby DENIED.

It is so ordered.

Dated this 7th day of June 2019, at Hartford, Connecticut.

/s/ AWT
Alvin W. Thompson
United States District Judge